

## Application of Section 250(b)(3)(A)(i)(VII) to Sales or Other Dispositions of Property

Notice 2025-78

### SECTION 1. PURPOSE

This notice announces that the Department of the Treasury (“Treasury Department”) and the Internal Revenue Service (“IRS”) intend to issue proposed regulations (the “forthcoming proposed regulations”) addressing the scope of section 250(b)(3) of the Internal Revenue Code (“Code”), which generally excludes any income and gain from the sale or other disposition of certain property described in section 250(b)(3)(A)(i)(VII) from the determination of deduction eligible income (“DEI”). Section 250(b)(3)(A)(i)(VII) was added to the Code by section 70322(a)(1) of Public Law 119-21, 139 Stat. 72 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act (“OBBBA”). Section 70322(a)(3) provides that section 250(b)(3)(A)(i)(VII) and the conforming amendment in section 70322(a)(2) apply to sales or other dispositions occurring after June 16, 2025.<sup>1</sup>

### SECTION 2. BACKGROUND

Section 250(a)(1) allows a domestic corporation to deduct an amount equal to a percentage of the corporation’s foreign-derived deduction eligible income (“FDDEI”). Section 250(b)(1) generally provides that FDDEI is the domestic corporation’s DEI

---

<sup>1</sup> The OBBBA also amended other provisions of section 250 that apply to taxable years beginning after December 31, 2025. Unless otherwise indicated, references to section 250 in this notice are with respect to section 250, as amended by the OBBBA.

derived in connection with (i) property sold to any person who is not a United States person and is for a foreign use, or (ii) services provided to any person, or with respect to property, not located within the United States. Section 250(b)(3)(A), as in effect prior to the OBBBA, defined DEI as the excess (if any) of a domestic corporation's gross income determined without regard to six categories of gross income described in sections 250(b)(3)(A)(i)(I) through (VI), over the deductions (including taxes) properly allocable to such gross income. Section 250(b)(5)(E), as in effect prior to the OBBBA, provided that the terms "sold," "sells," and "sale" shall include any lease, license, exchange, or other disposition for purposes of section 250(b).

Section 70322(a)(1) of the OBBBA amended section 250(b)(3)(A)(i) to add a new category of income in section 250(b)(3)(A)(i)(VII) that is also excluded from the determination of DEI. Specifically, section 250(b)(3)(A)(i)(VII)(aa) and (bb) exclude from gross income in determining DEI, except as otherwise provided by the Secretary,<sup>2</sup> any income and gain derived from the sale or other disposition (including pursuant to the deemed sale or other deemed disposition or a transaction subject to section 367(d)) of intangible property (as defined in section 367(d)(4)), and any other property of a type that is subject to depreciation, amortization, or depletion by the seller, respectively. Additionally, section 70322(a)(2) of the OBBBA amended section 250(b)(5)(E)<sup>3</sup> (defining the terms "sold," "sells," and "sale") to provide that section 250(b)(5)(E) does not apply

---

<sup>2</sup> The Secretary also has general regulatory authority to prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of section 250. See section 250(c).

<sup>3</sup> Section 250(b)(5)(E) was redesignated section 250(b)(2)(E) by section 70323(b)(2)(B) of the OBBBA for years beginning after December 31, 2025.

for purposes of the new category of gross income excluded from the determination of DEI in section 250(b)(3)(A)(i)(VII). Section 70322(a)(3) provides that section 250(b)(3)(A)(i)(VII) and the conforming amendment to section 250(b)(2)(E) apply to sales or other dispositions (including pursuant to deemed sales or other deemed dispositions or a transaction subject to section 367(d)) occurring after June 16, 2025.

### SECTION 3. REGULATIONS TO BE ISSUED

#### *.01 Scope of Section 250(b)(3)(A)(i)(VII)*

(1) *In General.* The forthcoming proposed regulations would address the scope of section 250(b)(3)(A)(i)(VII) as provided in this section 3.01.

(2) *Sale or other disposition.* A sale or other disposition of intangible property or other excluded property (as defined in sections 3.01(3) and (4) of this notice) means a sale or other disposition as determined under general tax principles, including deemed sales, other deemed dispositions, and transactions subject to section 367(d). A deemed sale or other deemed disposition includes any transaction or election that is treated as a sale or other disposition of property for Federal income tax purposes. A sale or other disposition does not include a transaction that would be characterized under general tax principles as a lease or license.

(3) *Intangible property.* Intangible property means intangible property as defined in section 367(d)(4). For purposes of section 250(b)(3)(A)(i)(VII)(aa), intangible property does not include a copyrighted article as defined in §1.861-18(c)(3).

(4) *Other excluded property.* Other property of a type that is subject to depreciation, amortization, or depletion by the seller (“other excluded property”) means

property that is not intangible property within the meaning of section 3.01(3) of this notice and that, in the hands of the seller:

(a) Is or has been treated as property which is of a character subject to the allowance for depreciation under section 167;

(b) Is or has been subject to an allowance for amortization that is not described in paragraph (a); or

(c) Is or has been subject to the allowance for depletion under section 611.

(5) *Seller*. Seller means the domestic corporation that sells or otherwise disposes of the intangible property or other excluded property.

(6) *Related-party anti-abuse rule*. Property that was other excluded property in the hands of a member of the seller's modified affiliated group that the seller acquires (1) in a transaction (or series of transactions) in which the basis of the property is determined, in whole or in part, by reference to the basis in the hands of the member in whose hands the property was other excluded property, and (2) with a principal purpose of avoiding the application of section 250(b)(3)(A)(i)(VII)(bb), is treated as other excluded property with respect to the seller. Solely for purposes of this section 3.01(6), the term modified affiliated group has the meaning given in §1.250(b)-1(c)(17) but without the substitution of "more than 50 percent" for "at least 80 percent" each place it appears, and by substituting "at least 80 percent" for "more than 50 percent" for purposes of determining control within the meaning of section 954(d)(3)).

## *.02 Examples*

The following examples illustrate the application of section 3.01 of this notice.

*(1) Example 1—Sale of intangible property.*

(a) *Facts.* DC, a domestic corporation, owns the copyright to a computer program, Program X. DC enters into an agreement with FP, an unrelated foreign person, under which DC grants FP an exclusive irrevocable license for the remaining term of the copyright, to copy and distribute an unlimited number of copies of Program X, prepare derivative works based upon Program X, make public performances of Program X, and publicly display Program X. FP will pay DC a royalty each year equal to y percent of net revenue derived from exploiting Program X during the year, for the remaining term of the copyright. Under general tax principles, DC is treated as having sold the copyright to Program X, notwithstanding that the agreement is labeled a license.

(b) *Analysis.* The copyright to Program X is intangible property within the meaning of section 3.01(3) of this notice. Because DC has sold intangible property (the copyright) under general tax principles, any income and gain resulting from the sale is excluded from the determination of DC's DEI, pursuant to section 250(b)(3)(A)(i)(VII)(aa). If, under different facts, the grant of rights under the license agreement were treated as a license under general tax principles, section 250(b)(3)(A)(i)(VII)(aa) would not apply to exclude any income and gain from the license from the determination of DC's DEI. See section 250(b)(2)(E) (excluding from its application section 250(b)(3)(A)(i)(VII)) and section 3.01(2) of this notice.

*(2) Example 2—Sale of fully depreciated property.*

(a) *Facts.* DC, a domestic corporation, holds a machine for use in its trade or business. The machine has an adjusted depreciable basis of zero because it has been

fully depreciated. During the taxable year, DC sells the machine to FP, an unrelated foreign person.

(b) *Analysis.* In the hands of DC, the machine is treated as property which is of a character subject to the allowance for depreciation under section 167. Therefore, the machine constitutes other excluded property and income and gain from DC's sale of the machine to FP is excluded from the determination of DC's DEI pursuant to section 250(b)(3)(A)(i)(VII)(bb). If, under different facts, DC acquired the fully depreciated machine in a non-recognition transaction for use in DC's trade or business, a similar result obtains because the machine is property which is of a character subject to the allowance for depreciation under section 167 in the hands of DC. Therefore, any income and gain from DC's sale of the machine to FP would similarly be excluded from the determination of DC's DEI.

(3) *Example 3—Sales of inventory and other excluded property used in a trade or business.*

(a) *Facts.* DC, a domestic corporation, owns 100 airplanes. DC owns five airplanes held for use in DC's trade or business that are of a character subject to the allowance for depreciation provided in section 167. DC holds the remaining 95 airplanes in inventory. During the taxable year, DC sells to FP, an unrelated foreign person, two airplanes that DC uses in its trade or business and 35 airplanes that DC holds in inventory.

(b) *Analysis.* DC's sale of the two airplanes is a sale of other excluded property because the two airplanes are of a character subject to the allowance for depreciation under section 167. Therefore, any income and gain from this sale is excluded from the

determination of DC's DEI pursuant to section 250(b)(3)(A)(i)(VII)(bb). DC's sale of the 35 airplanes to FP is not a sale or other disposition of other excluded property because the 35 airplanes are held as inventory, and are not of a character that is subject to the allowance for depreciation provided in section 167. Consequently, income and gain derived from the sale of the 35 airplanes is not excluded from the determination of DEI under section 250(b)(3)(A)(i)(VII).

*(4) Example 4—Sales involving members of a consolidated group.*

(a) *Facts.* P is the common parent of a consolidated group (as defined in §1.1502-1(h)). P owns all of the only class of stock of subsidiaries DC1 and DC2, which are members (as defined in §1.1502-1(b)) of the P consolidated group. DC1 owns ten airplanes that are of a character subject to the allowance for depreciation provided in section 167. In Year A, DC1 sells all ten airplanes to DC2, recognizing \$100x of gain. DC2 holds these airplanes in inventory. In Year B, DC2 sells all ten airplanes to an unrelated foreign person, recognizing \$85x of gain.

(b) *Analysis.* The treatment of DC1's and DC2's gain on their respective sales is subject to redetermination under §1.1502-13(c) to the extent necessary to achieve single entity treatment for the group. See §1.1502-13(a). If DC1 and DC2 were divisions of a single corporation, the ten airplanes would be, or would have been, of a character subject to the allowance for depreciation under section 167. See section 3.01(4)(a) of this notice. Therefore, to achieve single entity treatment, both DC1's \$100x of gain and DC2's \$85x of gain are treated in Year B as gain from the sale of other excluded property and are excluded from the determination of DEI.

(5) *Example 5—Related-party anti-abuse rule.*

(a) *Facts.* DC1 is a domestic corporation and owns an 80 percent interest in the profits and capital of a domestic partnership, PRS. Unrelated persons own the remaining interests in PRS. PRS owns all of the only class of stock of DC2, a domestic corporation. DC1 owns 20 cars that are other excluded property in the hands of DC1. With a principal purpose of avoiding the application of section 250(b)(3)(A)(i)(VII)(bb), DC1 transfers all 20 cars to PRS in an exchange described in section 721(a), and PRS transfers all 20 cars to DC2 in an exchange described in section 351(a). Under section 723, PRS's basis in the cars transferred to it by DC1 is the same as DC1's basis in the cars at the time of the transfer. Under section 362, DC2's basis in the cars transferred to it by PRS is the same as the basis of the cars in the hands of PRS. DC2 holds the cars in inventory and recognizes gain on the subsequent sale of all 20 cars to an unrelated foreign person.

(b) *Analysis.* DC1, PRS, and DC2 are members of a modified affiliated group for purposes of section 3.01(6). Because DC2 acquired property that was other excluded property in the hands of DC1, a member of DC2's modified affiliated group for purposes of section 3.01(6), in a series of transactions in which the basis of the property was determined by reference to the basis in the hands of the transferor with a principal purpose of avoiding the application of section 250(b)(3)(A)(i)(VII)(bb), the 20 cars are treated as other excluded property in the hands of DC2. Therefore, DC2's gain is gain from the sale of other excluded property and is excluded from the determination of DEI pursuant to section 250(b)(3)(A)(i)(VII)(bb).



#### SECTION 4. APPLICABILITY DATE AND RELIANCE

The forthcoming proposed regulations would apply, when finalized, to sales or other dispositions (including pursuant to deemed sales, deemed dispositions, or transactions subject to section 367(d)) occurring after June 16, 2025. A taxpayer may rely on the rules described in section 3 of this notice for sales or other dispositions occurring before the forthcoming proposed regulations are published in the Federal Register, provided the taxpayer applies the rules in their entirety and in a consistent manner for all applicable taxable years.

#### SECTION 5. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on the rules discussed in this notice. Comments should be submitted by February 2, 2026. Comments may be submitted electronically via the Federal eRulemaking Portal at <https://www.regulations.gov> (type IRS-2025-0268 in the search field on the regulations.gov homepage to find this notice and submit comments). Written comments may be mailed to Internal Revenue Service, CC:PA:01:PR (Notice 2025-78), Room 5503, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044. All commenters are strongly encouraged to submit comments electronically.

#### SECTION 6. DRAFTING AND CONTACT INFORMATION

The principal authors of this notice are Stefan A. Pruessmann and Michelle L. Ng of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Stefan A. Pruessmann or Michelle L. Ng at (202) 317-6939 (not a toll-free call).